

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 07-0166
Individual Income Tax
For the Year 2005**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Indiana Adjusted Gross Income Tax Liability

Authority: IC § 6-3-1-3.5; *Cooper Industries, Inc. v. Indiana Dep't of State Revenue*, 673 N.E.2d 1209 (Ind. Tax Ct. 1996); *Eibeck v. Indiana Dep't of Revenue*, 799 N.E.2d 1212 (Ind. Tax Ct. 2003); 45 IAC 3.1-1-1; I.R.C. § 62.

Taxpayer maintains that since he did not file a corresponding federal income tax return, he was compelled, under penalty of perjury, not to file the Indiana return.

II. The Amount Assessed

Authority: IC § 6-8.1-5-1(a); IC § 6-8.1-5-1(b); IC § 6-8.1-5-1(c); IC § 6-8.1-10-1

Taxpayer refers to the proposed assessment amount as "ridiculous."

STATEMENT OF FACTS

Taxpayer lives and works in Indiana. Taxpayer did not file an IT-40 for the year ending 2005. The Department filed an IT-40 on his behalf based on a 1099/W-2 received through Disclosure. Taxpayer is reported to have received total income of \$18,858. The Department mailed to Taxpayer a Proposed Assessment and a Demand Notice for Payment. Taxpayer mailed a protest letter to the Department stating that the amount assessed was "ridiculous" and that because he did not file a federal tax return he would be under penalty of perjury if he filed a state return. A hearing officer was assigned to hear the protest and mailed a letter informing Taxpayer of the hearing date. Taxpayer did not show for the tax protest hearing.

I. Indiana Adjusted Gross Income Tax Liability

DISCUSSION

Taxpayer argues that since he did not file a corresponding federal income tax return, filing an Indiana tax return would amount to perjury. According to the Taxpayer, because the state form specifically draws the adjusted gross income figure from the federal return, and because he did not file a federal return, he was compelled under penalty of perjury, to not file the state return.

The Indiana tax return form does employ federal adjusted gross income as the starting point for determining a taxpayer's state individual income tax liability. Line one of IT-40 specifically instructs the taxpayer to do so.

By Indiana statute the definition of state adjusted gross income is tied to Section 62 of the Internal Revenue Code. IC § 6-3-1-3.5 states: "When used in this article, the term "adjusted gross income" (as defined in Section 62 of the Internal Revenue Code)..." The statute thereafter defines modifications peculiar to Indiana that change the federal adjusted gross income number. The Department's own regulation restates this formulation. 45 IAC 3.1-1-1.

Both the statute and accompanying regulation require that an Indiana taxpayer use the federal adjusted gross income calculation, as determined under I.R.C. § 62, as a starting point for determining that taxpayer's Indiana adjusted gross income. However, Taxpayer's contention that he was compelled by force of law not to report Indiana adjusted gross income because he did not file the federal income tax form is without merit. The statute is plainly written and unambiguous. Indiana adjusted gross income begins with federal adjusted gross income as defined by I.R.C. § 62 not merely as reported by the taxpayer. *See Cooper Industries, Inc. v. Indiana Dep't of State Revenue*, 673 N.E.2d 1209, 1213 (Ind. Tax Ct. 1996). The directions contained within the Indiana income tax form provide the individual taxpayer with abbreviated guidance for completing the form. The directions do not create the Taxpayer's tax liability. The Taxpayer must put a number in the box and must put the *correct* number in the box.

The Indiana Tax Court addressed the Taxpayer's contention in *Eibeck v. Indiana Dep't of Revenue*, 799 N.E.2d 1212 (Ind. Tax Ct. 2003). "[I]t must be remembered that tax forms are used merely as an aid for taxpayers in calculating their taxable income in accordance with the income tax law. Therefore, calculating Indiana's gross adjusted income begins with federal taxable income as *defined* by Section 61(a) of the United States Code, not as what a taxpayer *reports* on its federal form." *Id.*, 1214 n.6 (*Emphasis in original*). Taxpayer's erroneous failure to file a federal tax return does not excuse his failure to file his Indiana income tax return, nor does it remove his Indiana income tax liability.

FINDING

Taxpayer's protest is denied.

II. The Amount Assessed

DISCUSSION

All tax assessments are presumed to be accurate. The taxpayer bears the burden of proving that an assessment is incorrect. IC § 6-8.1-5-1(b). If the Department reasonably believes that a person has not reported the proper amount of tax due, the Department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the Department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC § 6-8.1-10 concerning the imposition of penalties and interest. The Department shall send the person a notice of the proposed assessment through the United States mail. IC § 6-8.1-5-1(a). The notice shall state that the person has sixty (60) days from the date the notice is mailed to pay the assessment or to file a written protest. If the person files a protest and requests a hearing on the protest, the Department shall:

- (1) set the hearing at the Department's earliest convenient time; and
 - (2) notify the person by United States mail of the time, date, and location of the hearing.
- IC § 6-8.1-5-1(c).

The Department has followed the statutes and has provided Taxpayer with the opportunity to be heard at a hearing—which Taxpayer has chosen not to attend. Based on the information and evidence in Taxpayer's case file, the Department finds the proposed assessment to be accurate. No credible evidence to rebut the accuracy of the assessment was provided by Taxpayer.

FINDING

Taxpayer's protest is denied. The assessment of individual income tax is due. Penalties and interest are due.